

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2943 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HUSENBHAI ADAMBHAI TAILI

Versus

STATE OF GUJARAT

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Appearance:

MR MB PARIKH for Petitioner

MR DN PATEL ADDL. PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 13/09/96

ORAL JUDGEMENT

The petitioner hereinabove prays for being enlarged on bail challenging order of cancellation of bail passed by the learned Additional Sessions Judge at Amreli on 5th October, 1995.

2. In short, it is the case of the petitioner that before Amreli City Police Station, F.I.R. for the offences under Secs. 302 read with Secs. 34 and 201 of

I.P.Code was filed against him. During course of the investigation, he was arrested. Thereafter he filed Criminal Misc. Application No.175 of 1995 for being enlarged on bail which came to be allowed, hearing parties on merits. He was enlarged on bail imposing certain conditions, one of such conditions was not to intimidate the witnesses or tamper with the evidence. Later on it was alleged on behalf of the prosecution that the petitioner was misusing his liberty by intimidating the witnesses and tampering with the evidence. According to the prosecution, he contacted Firozkhan Mohmadkhan Pathan one of the witnesses, and threatened him with dire consequences, if he preferred to depose before the court against him. As he was misusing the liberty, prosecution filed Criminal Misc. Application No. 502 of 1995 before the Sessions Court at Amreli for cancellation of bail. The said application was assigned to the learned Additional Sessions Judge at Amreli who hearing the parties on merits, allowed the application and cancelled the bail on 5th October, 1995 and issued a non-bailable warrant for the arrest of the petitioner. It is against that order, the present revision application has been filed.

3. Mr. Parikh, learned advocate representing the petitioner submitted that the learned Judge fell into error in appreciating evidence and reaching the conclusion against the present petitioner. In fact, there was no legal evidence on record on which finding against the petitioner could have been given. The learned Judge below misdirected himself and ignoring the principles of Evidence Act erroneously reached to the conclusion that the petitioner was misusing liberty.

4. Mr. Patel, the learned APP vehemently opposed this revision application, and submitted that the learned Judge below had committed no error either of law or fact, the petitioner was required to be rejected, as on the basis of the affidavit filed by the Police Officer, the order came to be passed rightly. There was no error on the part of the learned Judge below in accepting the affidavit of the Police Officer.

5. Perusing the record, it clearly appears that the learned Judge has fallen into error in appreciating the evidence and accepting the affidavit of the Police Officer. No doubt the Police Officer has stated on oath that the petitioner is intimidating Firozkhan Mohmadkhan Pathan with dire consequences, if at all he preferred to depose before the court against him. It seems, accepting this affidavit, the learned Judge passed the order of

cancellation of bail.

5. It is the cardinal principle of law that the party asserting particular case and urging the court to accept the same has to adduce necessary evidence. The direct evidence on the point has to be led. If direct evidence is not adduced, but corroborative evidence is led, it will be of no value. The party knowing fact must state before the court on oath or file his affidavit. If he does not do so, the court will be entitled to infer everything against that party.

6. It seems, that such law has been over-looked by the learned Judge below. It is pertinent to note that Firozkhan Mohammadkhan Pathan who is having personal knowledge and whose evidence can be termed direct does not come forward to file his affidavit stating his case about intimidation. He according to the Police Officer lodged the complaint and on the basis of that complaint, the Police Officer filed the affidavit. The affidavit of the Police Officer is nothing but the corroborative piece of evidence. When direct evidence is not brought on record for the reasons best known to the prosecution, the corroborative evidence loses the value; and when direct evidence is not brought on record, I am entitled to infer everything against the prosecution. No doubt, F.I.R. is filed alleging that the petitioner is intimidating the witness but that cannot be considered to be the direct evidence. It is also the corroborative evidence. In short when direct evidence is not at all led, the learned Judge below fell into error in accepting the evidence having no value in the circumstances of the present case and reaching the conclusion against the petitioner. In short, there is no worth considerable evidence whatsoever on record so as to hold in favour of the prosecution.

7. The revision application, under the circumstances requires to be allowed and is accordingly allowed. The order of the learned Additional Sessions Judge, Amreli is quashed and set aside. The petitioner is ordered to be released on bail on his executing a bond of Rs.5,000/(Rupees : Five thousand only) with one surety of the like amount to the satisfaction of the trial court and subject to the conditions that he shall-

- (a) not take undue advantage of his liberty or misuse his liberty;
- (b) not act in a manner injurious to the interest of the prosecution;

(c) maintain law and order;

(d) mark his presence before Amreli City Police station on every Friday between 9.00 a.m. to 2.00 p.m.;

(e) not leave the local limits of a District Amreli without the prior permission of the Sessions Judge at Amreli .

(f) furnish the address of his residence at the time of execution of the bond and shall not change his residence without prior permission of this court;

3. If breach of any of the above conditions is committed, the Sessions Judge at Amreli will be free to issue warrant or take appropriate action in the the matter.

Rule is accordingly made absolute. Direct Service is permitted.

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